

## **The FCC Cannot Lawfully Rubber Stamp the CPUC's Service Area Redefinition Scheme**

- Conditioning additional rural ETC designations on state public interest findings and conditioning changes in rural ILECs' study areas as service areas on joint federal-state action are **exceptions to the 1996 Act's presumption in favor of competition.**
- The CPUC's only justification for automatically redefining Delta County's service area is to encourage competition, which conflicts with §214(e), FCC precedents and the FCC's rejection of the same automatic partitioning rule as unlawful.
- The FCC cannot comply with the §214(e)(5) requirement for joint state and federal action taking into account joint board recommendations by choosing not to "act on the petition" within 90 days – especially when parties have raised substantial and material issues of fact, law and policy that also require analysis and explanation.
- The FCC didn't issue a public notice within 14 days of receiving the CPUC petition on 8/12/02 and "acted" on the petition by "initiating a proceeding" when it called for comments in its docketed universal service proceeding on 9/25/02 and applied the ex parte rule for permit-but-disclose proceedings.
- The CPUC service area break-up rule and petition conflict with all three relevant joint board recommendations because
  - (1) the FCC and CPUC should wait for answers to the 11/8/02 joint board referral of portability issues in recognition of significant changes in conditions – which even asks how to "consider" support disaggregation in service areas for ETC designations;
  - (2) the "RTF" joint board only said to "consider" disaggregation, seemed unaware that the ILEC's service area was what is changed, and maintained the ILEC study area as the "overall area for which the carrier shall receive [federal] support," which §54.207(a) says is what the "service area defines"; and
  - (3) the 1997 joint board and Commission kept the study area because embedded interstate access costs are averaged at the study area level and plainly recognized that the law puts rural areas "on a different competitive footing."
- The rural service area definition in the act simply fleshes out the statutory requirements for designation of ETCs and has meaning only in the context of a state's duty to make a public interest finding before designating an additional rural ETC. The CPUC has bypassed as irrelevant all but its desire to "create" competition, contrary to the concerns expressed by the Chairman and Commissioner Martin.
- The CPUC presumes without any request or information that the benefits of subsidizing wireless service that is already in place will outweigh the unexplored costs and adverse impacts on efficiency, infrastructure investments, fund size, access charge averaging and study area the ILEC's carrier of last resort and federal service obligations such as CALEA.

□ State control over the size of federal support via interstate ETC designations must be tempered by the safeguards of §254(f) and the 10<sup>th</sup> Circuit call for state support inducements, since state designation also confers ETC status for state purposes. Section 254(f) provides:

A State may adopt regulations to provide for additional definitions and standards to preserve and advance universal service within that State only to the extent that such regulations adopt additional specific, predictable, and sufficient mechanisms to support such definitions or standards that do not rely on or burden Federal universal service support mechanisms.